the review

of the College of Law Alumni Association
University of Kentucky, Inc.

Winter, 1982-83

Mineral Law Center Established

David C. Short, newly appointed director, Mineral Law Center.

Inside This Issue

Alumni News
1982 Law Fund Report
Class Reunion Photos
Roy Moreland Revisited
Rehnquist Delivers Swinford Lecture
Faculty News
The Right of Publicity
New Phone Numbers Listed

Dean Robert G. Lawson has announced the creation of a Mineral Law Center at the College of Law and the appointment of David C. Short '67 as director. The Center will be funded jointly by the University and private gifts. "The University of Kentucky is an ideal site for such a program because Kentucky is the leading producer of coal (with very large reserves) and is currently the site of extensive new oil, gas, and oil shale exploration activity," said Dean Lawson.

The creation of a mineral law program has been under discussion at the University of Kentucky for a number of years. In 1976 a committee of the law faculty appointed by then Dean Thomas P. Lewis began evaluating similar programs currently in existence and determining what role a new one might fulfill. Though the proposed center has always been thought of as one whose efforts would be devoted primarily to coal-related legal issues, it will have broad objectives, and will include the consideration of problems inherent in the production of all energy sources.

The principal missions of the University and the College of Law—teaching, research and service—are to be the basis for the goals of the Center. In the early years, the Center will strive to accomplish the following objectives set out by the faculty in its 1981 report to the College's Visiting Committee:

1. Expand the College's curricular offerings in the general area of mineral law;
2. Secure research grants, stimulate and support faculty research, and hire research staff as funds are secured for defined projects;
3. Conduct symposia, seminars, and continuing legal education programs in the areas of mineral law, and
4. Establish a coal law journal which will strive to become self-supporting in due course.

If resources are available in future years, the College contemplates that the Center might well move into the development of a graduate program in mineral law.

In pursuit of these objectives, both immediate and long range, the Mineral Law Center will strive to operate like similar programs at UK and at other leading universities—to serve the general interest of the public responsibly and independently. The program viewpoint as described in the 1981 faculty statement, will be "objective and non-partisan, the latter not meaning that the program would avoid taking

(continued on page 2)

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Many changes are occurring within the Law School and every effort is being made to report on these changes. There are, however, a great many other developments, both within and without the Law school, that are of interest to alumni, friends, faculty and students. Readers are therefore encouraged to submit items of general interest, of either news or commentary value, for publication.

Contents

Mineral Law Center Established 1

Alumni News 3
- **College Law Fund Tops $100,000** 3
- **Class Reunions (photos)** 4
- **Annual Meeting Set** 6
- **In Memoriam** 6
- **Roy Moreland Revisited** 7

College News 9
- **Rehnquist Delivers Swinford Lecture** 9
- **Dean's Message** 10
- **Faculty News** 10
- **Elvis Stahr Feted in Lexington** 11
- **The Right of Publicity** 13
- **1982 Starting Salaries Compiled** 14
- **New Phone Numbers Listed** 16

Mineral Law Center *(continued from page 1)*

positions, but meaning that the program would not be captive to any group."

David Short, the Center's new director, is uniquely qualified to head such an effort. He is a former Regional Director of the United States Department of Interior, Office of Surface Mining in Knoxville, Tennessee and Assistant Deputy Kentucky Attorney General for Natural Resources and Environmental Protection. During his service as Regional Director, he was awarded the rank of "Meritorious Executive" by President Carter for his outstanding contributions (one of 206 in the entire nation). Immediately prior to joining the law school faculty, he was associated with the firm of Stites, McElwain & Fowler and practiced out of its Frankfort office. He is a native of Harlan County, Kentucky, a member of the Kentucky and Tennessee bars, a trustee at large of the Eastern Mineral Law Foundation and a holder of a Masters degree in International and Comparative Law (cum laude) from Vrije Universiteit, Brussells, Belgium.

The new center will draw on a number of resources at the University. UK has been designated as a "State Mining and Minerals Resource Institute" under Title III of the Federal Surface Mining Act, and UK 's Institute for Mining and Minerals Research has received funding through the United States and Kentucky Departments of Energy for a number of significant projects. In addition, the University has recently committed itself to the development of a first-rate mining engineering program. The Margaret King library system operates a coal literature collection development and resource sharing project with West Virginia University that is unique in the country.

ALUMNI NEWS

William H. Coldiron '48, General Counsel of the U.S. Department of Interior, was in Lexington in early December to speak to board members of the National Coal Association. He reviewed the department's efforts to open federal lands to energy production and to give states responsibility for enforcing strip-mining rules. William H. (Hank) Graddy, IV '75, president of the Kentucky chapter of the Sierra Club, delivered a response to Coldiron's remarks.

John R. Gillespie '49 is a partner in Gillespie, McCormick, McFall, Gilbert & McGee in Pompano Beach, Florida.

Arthur W. Purkel '52, is an attorney for Flying Tiger Line in Los Angeles. His home is in Mascoutah, Illinois, a suburb of St. Lewis.

Joe L. Schoepf, Sr. '52, is Maricopa County Attorney, Phoenix, Arizona.

Ollen B. Hinnant '55, an assistant general counsel of Prudential Insurance Company in Newark, New Jersey, was appointed to the U.S. Commission for the United Nations Educational Scientific and Cultural Organization (UNESCO) in May, 1982. He was recommended for the appointment by then Secretary of State Alexander M. Haig, Jr.

David B. Sebree '56, represents E. I. du Pont De Nemours & Company. His office is in Austin, Texas.

Beauchamp E. Brogan '57, Secretary and General Counsel for the University of Tennessee, spoke at the 22nd Annual Conference of the National Association of College and University Attorneys July 7-10, 1982, at the Waldorf Astoria in New York City. His topic was "Faculty Outside Income and Conflict of Interest".

Arthur L. Brooks '59, Jennifer B. Coffman '78 and **Jane V. Fitzpatrick '80** announce the formation of the firm of Brooks, Coffman & Fitzpatrick. Their offices are at 183 North Upper Street in Lexington.

Richard W. Spears '61, Senior Vice-President for Human Resources and Law, was in May, 1982 awarded the degree of Doctor of Laws, Honoris Causa, by Georgetown College, his alma mater. A 1957 graduate of the school and a member of its Board of Associates, Spears joined Ashland Oil, Inc. in 1964. He is a Fellow in the College of Law Lafferty Society and has since 1981 served on the school's Visiting Committee.

Peter Perlman '62, has been elected Secretary of the Association of Trial Lawyers of America (ATLA), following a two-year term as ATLA parliamentarian. He has served on a number of ATLA committees and has been active for years in its Kentucky counterpart, the Kentucky Association of Trial Attorneys. The Association of Trial Lawyers of America is the world's largest trial bar organization with more than 50,000 members throughout the United States, Canada, Puerto Rico, and other countries.

Michael Miller '65, is in practice in Nashville with the firm of Gracey, Maddin, Cowan & Bird.

Richard A.Brown, Jr. '67, is a partner in the Newport Beach, California firm of Howser, Gertner & Brown.

John C. Hunsaker, III, M.D. '67, has been appointed deputy medical examiner for a 60-county area of Central and Eastern Kentucky. He was formerly assistant medical examiner for the District of Columbia. His classmate and wife Ann T. Hunsaker is Assistant General Counsel for Health Care Financing in the Administration and Human Development Services area, Department of Health and Human Services, Washington, DC.

Laura Murrell '67, has been appointed by Governor Brown as chairman of the Public Service Commission of Kentucky.

College of Law Fund Tops $100,000

With a month and a half left to go in the campaign, 1982 College of Law Fund Chairman William T. Robinson, III on January 12 announced that receipts had topped the $100,000 mark. Only once in the Fund's six year history, in 1980, had the final total ever exceeded $90,000.

Several new scholarship and other special purpose funds were established by donors in 1982, and a record number of Fellows were inducted into the Lafferty Society, according to Chairman Robinson. More than 50 alumni volunteers assisted in soliciting for the drive, and over 500 alumni responded with gifts. Pledges for future giving received during the March 1, 1982-February 28, 1983 period were expected to reach a final total exceeding $200,000.

A complete report of Fund accomplishment and a list of all donors will be carried in the next issue of *The Review*.

Thomas Hindes '68, formerly a faculty member at the West Virginia University College of Law, has been appointed to the faculty at California Western School of Law in San Diego.

Michael C. Kovaleski '69, is a partner in the Centerline, Michigan firm of McAlpine, Kovaleski & Krusell.

Thomas E. Price '69, of Mt. Carmel, Illinois, is a partner in Timberlake, Price & Sawyer.

Kirk Moberley, Jr. '71, is with the Defense Contract Audit Agency, Alexandria, Virginia.

William T. Robinson, III '71, was recently elected Vice President of the Kentucky Bar Association. He is a member of the College of Law Alumni Association Board of Direc-

tors and is 1982 National Chairman of the College of Law Fund. He is a Fellow in the College of Law Lafferty Society and a past Chairman of the House of Delegates of the Kentucky Bar Association. He has served on the KBA Board of Governors since 1980. He practices in Covington, Kentucky with the firm of Robinson, Arnzen, Parry & Wentz, a newly-formed association which includes Mark G. Arnzen '72, Ronald R. Parry, Richard E. Wentz '75 and Harry D. Rankin '78.

Gary J. Celestino '72, is division counsel for Ashland Exploration, Inc., a subsidiary of Ashland Oil, Inc. located in Houston, Texas.

Kenneth L. Fields '74, practices in Phoenix, Arizona with the firm of Campana & Horne, P.C.

Richard S. Webb, IV '74, is a partner in the Sarasota, Florida firm of Duffey, Reese, Judd & Webb, P.A.

Joan C. Lee '75, works for the Alaska Legal Services Corporation in its Nome, Alaska office.

T. Lynn Williamson '75, has been appointed by UK President Otis A. Singletary as coordinator of personnel policies and procedures for the entire University system. He was formerly associate dean of students for the Lexington campus.

H. Nicholson Carter '76, is Associate General Counsel for MAPCO, Inc., Lexington, Kentucky

David H. Cooper '76, is Vice-President and General Counsel of RONALCO, Inc. in Louisville, Kentucky.

Henry S. Johnson '76, formerly of Handmaker, Weber & Rose in Louisville, has relocated his practice to Harlan, Kentucky. His office is in the Horton Building.

Lewis G. Paisley '76, was appointed by Governor John Y. Brown, Jr. to the Fayette District Court. He replaces John Famularo '71, who resigned to join the Lexington firm of Harbison, Kessinger, Lisle & Bush.

Richard Vanderburgh Murphy '76, formerly corporate counsel for the Lexington-Fayette Urban County

Members of the class of 1932 in attendance at the 50th reunion celebration held September 16, 1982 at Spindletop Hall. Of the 14 living members of the class, 12 returned for the event. Present, from left: O. Lander Bright, Flemingsburg, Ky.; Robert H. Alsover, Knoxville, Tenn.; John C. Bagwell, Arlington, Va.; William H. Hays, Shelbyville, Ky.; Peter D. Giachini, Maywood, Ill.; W. Henderson Dysard, Ashland, Ky.; Albert M. Carnes, Paducah, Ky.; Rufus Lisle, Lexington, Ky.; E. R. Denney, Lexington, Ky.; Carlyle W. Schuermeyer, Louisville, Ky.; Lon B. Rogers, Pikeville, Ky.; Harry G. Black, Jr., Hawesville, Ky.

The class of 1957 held its 25th reunion at the Hyatt Regency-Lexington October 15-16, 1982. Pictured here are, front row, seated, from left: Professor Frederick W. Whiteside, Ted L. Igleheart, Caywood Metcalf and Hunter B. Whitesell. Second row: James L. Cloar, Jr., William E. Bivin, James B. Stewart, George W. Woodcock, Jr., Luther P. House, Jr., Martin V. Mainous. Last row: James F. Miller, Melvin Scott, Joe L. Travis, Arthur E. Abshire, James E. Cooper, Professor Paul Oberst, Wayne J. Carroll, Donald B. Smith, Marvin W. Suit, and Charles L. Calk.

In attendance at the classes of 1962 and 1963 reunion, held in Lexington over the weekend of October 29-30, 1982 were, front row, from left: William M. Cox, J. William Graves, Robert B. Hensley, Philip B. Austin, Charles S. Cassis. Second row: Peter Perlman, Clay Hundley, Jr., C. Fred Duffield, E. Frank Martin, Jr., Judge Tony Wilhoit, Robert G. Lawson, Paul J. Shapiro, William C. Jacobs, Ronald G. Polly. Last row: Whayne C. Priest, Jr., Larry D. Raikes, Terry Earle, John Marion Williams, Philip Taliaferro, W. R. Patterson, Jr., William E. Gary, III, and Larry A. Carver.

Members of the 1932 class, from left: O. Lander Bright, Rufus Lisle, E. R. Denney, and John C. Bagwell looking at their graduation photos and sharing fond memories.

Class of 1957 members: Caywood Metcalf, George W. Woodcock, Jr. (with back to camera), James Stewart and Charles Calk.

Government, has become associated with H. Foster Pettit, whose practice is in Lexington.

Ann Samani '76, is the estate administrator for the U.S. Bankruptcy Court, at Eastern District of Kentucky.

Joshua E. Santana '76, has resigned as general counsel of the Natural Resources and Environmental Protection Cabinet to become general counsel of Bow Valley Coal Resources, Inc. in Middlesboro, a subsidiary of a Canadian-based energy company. While in government, Santana was involved in the negotiations that led to the federal government's granting Kentucky primary responsibility for enforcement of strip-mine regulations.

Rebecca Westerfield '76, is a member of the Louisville law firm of Goldberg & Simpson.

Bruce S. Boyer '77, has been promoted to the position of prosecutor in the Organized Crime Unit of the State Attorney's Office, Clearwater Florida. He lives at 6321 Ridge Road # 208, Seminole, Florida 33542.

Barbara B. Edelman '77, is director of litigation, Department of Law, Lexington-Fayette Urban County Government.

Phillip G. Royalty '77, is with the public accounting firm of Ernst & Whinney in Washington, D.C. He lives in Northern Virginia.

Kathleen E. Voelker '77, is an assistant U.S. attorney for the District of Columbia. She was formerly with the U.S. Department of Justice.

G. Walter Christopherson '78, is a vice-president with Rotan Mosle, a regional brokerage firm in Houston, Texas.

Nancy Marksberry Collins '78, has joined the Hazard, Kentucky firm of Hollon, Hollon & Hollon.

J. Vaughan Curtis '78, is a member of Atlanta's largest law firm, Alston & Bird, which was formed December 1, 1982 by the merger of Alston, Miller & Gaines and Jones, Bird & Howell, two of Atlanta's oldest law firms. The merged firm has 132 attorneys. **Jonathan L. Rue '82,** is also associated with the firm.

Peggy S. Foraker '78, practices in Portland, Oregon with the firm of Wolf, Griffith, Bittner, Abbott & Roberts.

James L. Hill '78, is with CRS, Inc., an international engineering and architectural firm in Houston, Texas. He is responsible for financial planning and foreign government compliance.

Susan M. Matchett '78, is deputy treasurer for the city of Virginia Beach, Virginia.

Steven R. Schafer '78, is a member of the Ft. Wayne, Indiana firm of Bonahoom, Chapman, McNellis & Michaels.

Ray Stewart '78, has been transferred by Coopers & Lybrand to its Washington, D.C. office. He is pursuing an LL.M. in Taxation at Georgetown University.

James D. Zornes '78, practices in Columbia, Kentucky with Durham, Durham & Zornes.

Cynthia A. Cecil '79, is a member of Ehrlenbach, Ehrie, Coleman, Cecil & Fahnenbruck & Shaw, in Columbus, Ohio.

Drake Cutini '79, formerly with Wilmer, Cutler & Pickering, Washington, D.C., has joined the Trial Division of the Federal Programs Office, U.S. Department of Justice.

James Kleier '79, of Morrison & Foerster, San Francisco, California, has relocated his practice to the firm's Washington, D.C. office.

Leona A. Power '79, has recently been appointed legislative counsel for the U.S. Department of Interior by Secretary James Watt.

Jane Bondurant Gilbert '80, is an attorney with the Small Business Administration in Louisville.

Jack Hedges '80, practices in Trenton, Ohio and teaches Business Law at Miami University of Oxford, Ohio. His address is 240 E. State Street.

Tim Lowe '80, has joined the legal staff of Amvest Corporation in Big Stone Gap, Virginia.

Joan A. Nelligan '80, has been elected an assistant vice president in the personal trust department of Colonial Bank in Waterbury, Connecticut. She had served in similar capacities at Lexington's First Security Bank and the Citizens Union Bank.

Susan B. Tatnall '80, has established a solo practice in Geneva, Illinois, outside Chicago.

C. Lee Thomason '80, formerly a law clerk to Judge Bernard T. Moynahan, Jr., has joined the Red Bank, New Jersey law firm of Evans, Koelzer, Marriott, Osborne & Kreizman.

Betty C. M. Horn '81, is director of government relations for the National Association of Truck Stop Operators, Washington, D.C.

Jeff H. Ockerman '81, has joined the legal staff of the Commerce Bank of Nashville.

Roger T. Rigney '81, has relocated his practice from Atlanta to Elizabethtown, Kentucky. His office is at 115 W. Poplar St.

Stephen G. Murty '82, has opened a new office for the practice of law at the Flagship Center in Miami, Florida.

Evan G. Perkins '82, was named recipient of the annual Roy Moreland Award for Most Outstanding Senior at the 1982 Commencement. The award is given each year in honor of a deceased alumnus and member of the College of Law faculty.

Annual Meeting Set

The Annual Meeting of the College of Law Alumni Association, University of Kentucky, Inc., will be held in Owensboro, Kentucky Thursday evening May 19, 1983, the second day of the Kentucky Bar Association Convention.

The Executive Inn hotel will serve as the convention headquarters. The location of the Alumni Association dinner meeting will be announced by means of a March mailing.

IN MEMORIAM

Logan N. Green '16, Garden City, Kansas

Robert H. Hays '21, Lexington, Kentucky, June, 1979

Chloe Gifford '23, Lexington, Kentucky, one of the University's first women law graduates. Miss Gifford, the first Kentuckian elected president of the 12 million-member international General Federation of Women's Clubs, had devoted her entire career to public and humanitarian service. A former director of community services at the University and dean of girls at Sayre School, Chloe Gifford served on several local, state and federal commissions, including the White House Council on the Aging and the President's Committee on the Employment of the Handicapped. Often active in political issues, she was known nationally for her support of statehood for Alaska and of a bill in the 1966 session of the Kentucky General Assembly calling for equal pay for equal work by women. She was mentioned in a 1959 survey as one of 70 women who might be nominated for Vice-President of the United States.

Robert M. Coleman, Jr. '24, Bowling Green, Kentucky

Joe Hobson '25, Prestonsburg, Kentucky, the oldest practicing attorney in Floyd County. He served several terms as Prestonsburg's city attorney, the last running from 1973 to 1977. He was the son of the late John P. Hobson, a judge on the Court of Appeals of Kentucky.

Woodson D. Scott '27, Stamford, Connecticut, April 26, 1982, a partner in the New York City law firm of Lord, Day & Lord.

Martin R. Glenn '32, Louisville, Kentucky

James G. Begley '36, Danville, Kentucky

Robert S. Hammond '43, Clovis, New Mexico, March, 1982

George Silliman '46, Boyle County attorney, 1965-1971

Robert M. Perry '50, Banning, California

Walter Tackett '52, June 5, 1982, Fayette District Court Judge.

Wade F. Richardson, II '67, Brandenburg city attorney and former Meade County attorney, of a heart attack. He was a director of the First State Bank in Irvington and a Certified Public Accountant.

Roy Moreland Revisited

Few people have left their mark on the College of Law like Professor Roy M. Moreland, who died in 1971. A legend among several generations of UK lawyers, Professor Moreland taught at the College from 1926 until his retirement in 1966. He was a member of the College's class of 1923 and held advanced law degrees from the University of Chicago and the Harvard Law School.

Professor Jesse Dukeminier, of the University of California, Los Angeles School of Law faculty, who was once a colleague of Professor Moreland's at UK, has recently supplied the College with a transcript of a Criminal Procedure class conducted by Moreland on May 18, 1957. The transcript reveals much in the way of Professor Moreland's legal philosophy and colorful classroom style. Some excerpts from that transcript follow, which will provide an instant trip down memory lane for all who were ever in his presence.

At one point early in the period, Professor Moreland compares the Federal Rules of Criminal Procedure to old English principles of practice and certain proposals being offered at the time by the American Law Institute.

> ". . . The Federal Rules are in between the two. One thing the Federal rules does provide is for the bill of particulars—uh, can be handled by the prosecuting attorney, without going back to the grand jury, and that is helpful. It is an *improvement.* All three are improvements. I think the ALI code is the greatest improvement. It's rather shocking. (pause) Someone said here the other day that it was no more shocking than the new rules as to petition. Some crazy clod said in the second year class that all you had to do now was to file a sheaf of papers saying: "Plaintiff herein thinks he has a cause of action. Will the court please see if he has a cause of action?" Oh, something like that, that's all you had to do. You didn't have to bring a cause of action, you didn't have to do anything except file a sheaf of papers, saying you have one. The court'd call the parties in, you'd have a discussion, if you were a damn fool you could plead just as well as if you were skilled. That's preposterous. Preposterous. It isn't true. It's so untrue that it's silly."

Moreland later in the class offered the following opinion on lawyers' use of language:

> "A comment about the . . . (names student) says there're only six or seven words, why not stick 'em in? It makes no difference. *Don't stick in ANYTHING.* That is a deal! (general uproar) Six or seven words here, six or seven words there. That is the same kind of argument that (names a second student) might make. I think there is a certain amount of—oh, I don't know—rhythm: [recites string of legal-sounding phrases]. That sounds like a lawyer, sounds good. *Sounds* like a lawyer. Lawyers don't talk English like other people. Cut out all this prolixity."

On the subject of criminal defendants' right to counsel, Moreland was always outspoken. During this particular classroom session he reminded students of some of his views on the matter:

> ". . . I have two chapters on this in this book, one on right to counsel *before* trial and one on right to counsel *at* the trial. A defendent is entitled to counsel at the trial. Ordinarily he's not entitled to counsel *before* trial. The fact of the matter is he may well need counsel more *before* trial than at the trial. This business of picking a fellow up and taking him down to Louisville and beating him up in a hotel room for three or four days without an opportunity to talk to a lawyer—see how simple that is? I really think he needs counsel many times before trial more than he needs one at the trial because you can get by with a certain amount of skullduggery in open court. But you can get by with an awful lot of skullduggery in a hotel room at the Brown Hotel."

Near the end of the class, Professor Moreland's opinions on lawyers' professional responsibility to indigent clients and clients' ability and willingness to pay for legal services were recorded:

> "Well, that is what we're going to talk about here, if you've read this material (laughter). It's a . . . this canon raises this. This is one of law's hardest problems. No-

body else works for nothing. I don't know anybody who works for nothing. Preachers? Nobody works for nothing. Doctors stopped it years ago. Should lawyers have to work for nothing? And what do you think about that (names student) . . .

. . . Son, I'm going to alert you to one of the most embarrassing facts of life. About one-third of the people are turnips and you can't get blood out of turnips. You can't get blood out of people who have no money. About a week ago they tried a case down here in police court. An old duck was accused of beating his 12 year old daughter half to death with a belt and he asked for a lawyer and they said, "Do you have $9.00? It takes $9.00 to get a lawyer." And he says, "No money." [The judge] says, "No jury", and they went ahead and tried him and a bunch of ministers were much excited. Now that's the same kind of problem . . .

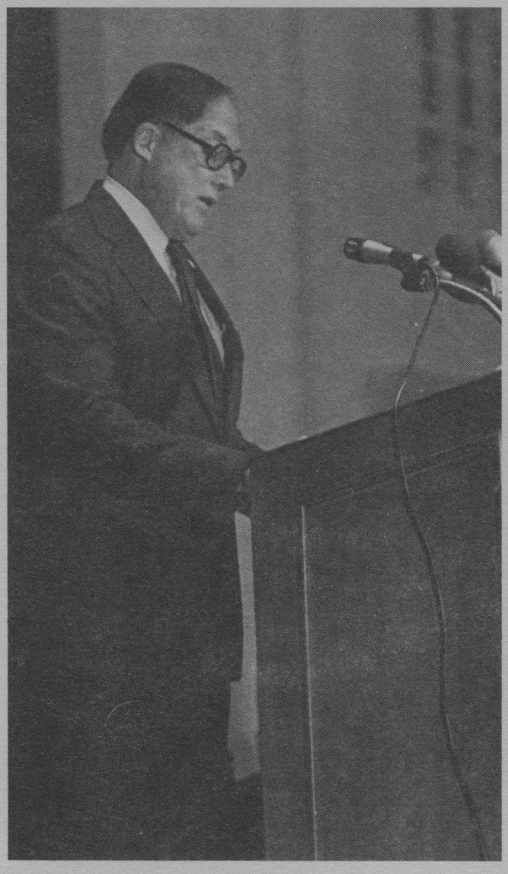
. . . Well, you mean appoint an attorney for each case and pay that out of the public funds? Well now, there's some argument for that. Of course what will happen is that that will be a nominal amount and good attorneys won't bother with it. It's like warning order attorneys . . . (Indian war whoop interrupts, followed by laughter and noise) . . . gives you five-ten dollars. Used to give you three I think. The fellow who runs for county attorney is ordinarily a young man of reasonable ability, he's not altogether a clod. I think the defender ought to be of equal caliber . . . That's a thought. There's something in it. . . .

. . . I suppose that the penitentiaries are full of—you want to hold those cigarettes, you want to hold those cigarettes, please—I suppose the penitentiaries are full of folks who have been sent there by poor young attorneys."

Finally, one of Professor Moreland's famous digressions, in which he recounts an experience he had while serving on a university's board of trustees. The story picks up as he is describing one of his colleagues on the board who had been called to jury duty.

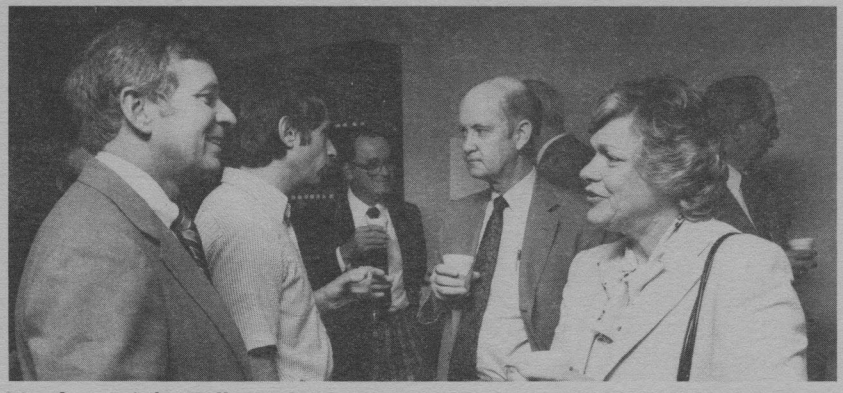
> ". . . And one of the men who was on the jury who is well-known here in town—if I mention his name—he's a professor, a professional do-gooder. I hope (one of the Baptist preacher types), I hope his house is clean. I hope his windows are washed. Because he is notoriously a do-gooder. He came along, he's just been put on the board 'cause he's got a lot of money. You can't even get on a board of a denominational college here nowadays unless you got a lot of money to kick in. I'll never forget the time I sat on the back row at a regular board meeting and somebody in front jumped up and gave fifteen hundred dollars. Out of the clear sky. Says, "If the board won't give, who will?" My God, I thought, fifteen hundred dollars! And they kept it goin' and a fellow who's a graduate out here who I didn't think had very much money gave five hundred and they kept getting closer and closer. Five hundred dollars was the *smallest* amount! I thought, "Hell, Mr. Moreland, you are going to get sandbagged to give them five hundred dollars . . ." The old man next to me, he owns about a thousand acres out here, he's a wealthy man, he's about seven feet tall and he says, "I came up here to a board meeting," and he says, "I don't propose to be sandbagged into making a donation." Says, "I've given to the school and I will again. If you need money, come out to my farm and we'll talk about it. But don't give me a summons to a board meeting and then get me here and try to put the pressure to make me give you a donation." He says, "Unless this stops right now, out that door I go." He saved *me* five hundred dollars! (laughter)

Rehnquist Delivers Swinford Lecture



Justice William H. Rehnquist, 1982 Judge Mac Swinford lecturer.

Justice William H. Rehnquist of the United States Supreme Court delivered the third annual Judge Mac Swinford Lecture at Memorial Hall September 23, 1982. His address was entitled "Are the True Old Times Dead?". It dealt with the legislature's role in increasing the workload of the federal courts, and causing areas of judicial activity to expand. He stated his belief that the growth in size of the federal judiciary did not necessarily mean qualitative improvements in either judicial personnel or judicial output. Nearly 1000 people attended the lecture, which was free and sponsored by the College of Law and the Kentucky Bar Association.



Members of the College of Law Visiting Committee share morning coffee with the faculty preceding their opening session September 24. Left to right are Laramie L. Leatherman '53, Professor Alvin Goldman, Alan R. Vogeler '40, chair, Professor Thomas L. Jones '61, Dianne McKaig '54. Partially hidden in the background are Professor Paul Oberst and Roger B. Leland '54.

Justice Rehnquist speaks at a faculty colloquium.

The 1982 Judge Mac Swinford Lecture drew a capacity crowd to Memorial Hall.

Dean's Message

This is my first opportunity to address the alumni through the Review since assuming the deanship of the College on July 1. I have been much too busy these last few months (trying to finish "old" and start "new" work) to have given adequate thought to the contents of my initial remarks to you. By the time of the next issue of the Review I hope to have settled into the new job a little better and to be able to give you a comprehensive report on the overall health of the College. I intend on this occasion to be fairly brief, to tell you about some of my alumni activities of this past semester, and to give you an initial impression I have formed about the School and its relationship with you.

As most of you know I have been a part of this College for more than twenty years, occupying during that time the roles of student, alumnus, teacher, and now dean. I have known for a long time that the richest endowment the Law School has is the loyalty and good will of its graduates. But only in the last few months have I come truly to appreciate the total significance of that endowment.

I have made a special effort this year to get around the state to visit with alumni groups. I have been to Elizabethtown, Glasgow, Midway, Ashland, Lexington of course, and Carrollton. I have spoken to bar association groups made up largely of graduates from our school and have been in attendance at law alumni gatherings of several different kinds. I have had the pleasure during the past few months of attending three class reunions of law graduates and of hosting the annual law alumni cocktail party on homecoming weekend in Lexington. By total count I have visited with several hundred graduates of the College. And I must say that I have been overwhelmed by the kindness and good will shown me as an individual and the School as an institution.

I must also say that never before have the good feelings of this group been so crucial to the future of the College. Higher education is in the midst of a financial crunch of threatening proportions. The past three years have been difficult and the next five or so promise to be no better. In the midst of this crunch we have become increasingly dependent on the support of our graduates for the funds needed to maintain quality education for our students.

FACULTY NEWS

Richard Ausness. *Publications:* "Putting the Genie Back in the Bottle: U.S. Controls Over Sensitive Nuclear Technology," 16 *Geo. Wash. J. of Int'l L. & Econ.* 65-118 (1981); contributor to "Acquiring Water for Energy: Institutional Aspects" (Water Resources Publications, 1982). *Professional Lectures:* Water Policy in the South Conference, Memphis, TN, Nov. 18-19. Topic: "A Model Water Code"; speaker at meeting of Kentucky Water Management Task Force, Frankfort, Kentucky. Topic: "Reforms for Kentucky's Water Rights Statute", KRS Chapter 151. *Activities:* Judge, Association of Trial Lawyers of America, Environmental Essay Contest, June, 1982; member, American Society of Civil Engineers Task Force Committee on Legal Aspects of Protecting Instream Flow Uses; attended ABA workshop on the New International Economic Order, St. Louis, Dec. 10-11, 1982.

William H. Fortune. *Publications:* "Voir Dire in Kentucky", 69 *K.L.J.* 273 (1981); "Judicial Admissions to Preclude the Introduction of Prejudicial Evidence", 17 Criminal Law Bulletin 101 (1981; "Criminal Rules Survey", 71 *K.L.J.* 395 (1982); "Criminal Procedure Survey" of important Kentucky cases, to be published in 71 *K.L.J.*

Eugene R. Gaetke. *Publications:* "Kentucky Law Survey, Professional Responsibility", 70 *K.L.J.* 325 (1982) with Casey; "Solicitation and the Uncertain Status of the Code of Professional Responsibility in Kentucky", 70 *K.L.J.* Professor Gaetke is a Visiting Professor at Indiana University—Bloomington, for the academic year 1982-83.

Barbara A. Foster '77 has been appointed a Visiting Assistant Professor of Law for the academic year 1982-83. She taught Federal Income Tax in the first semester and will teach Gift and Estate Tax and Estate Planning the second semester. Professor Foster was awarded the LL.M. degree in Taxation in May, 1982. She was an attorney in the Tax Litigation Division of the Internal Revenue Service, Office of Chief Counsel from April 1978 until April, 1981, when she was assigned to the Administrative Services Division of the agency.

Barbara Foster

It has been customary in this state to think of institutions of higher learning as divided into two distinct groups—private and public schools. Institutions in the first group have long been the recipients of generous support of alumni and friends and in fact have achieved great strength as a result of that generosity. Public institutions, on the other hand, have been regarded as responsibilities of the taxpaper, with no need for or interest in strong support from private sources.

No longer is the distinction between the two kinds of schools viable. The truth is that the economic situation of the country has robbed the legislature and the taxpayer of the capacity to provide the full financial support needed to maintain academic quality in an institution such as ours. Undoubtedly we must continue to look to the state treasury for the bulk of our resources. But we must look elsewhere for the funds needed for something more than survival of the institution. In the last five years the College of Law has gradually become a blend of public and private school. We must continue to develop along those lines during the next five years. Without significant private support the deterioration in institutional quality that you can expect to see will be serious and perhaps irreparable.

Despite the difficulties of tough economic times, the College has managed thus far to fight off deterioration. We have even made some progress, and continue to be excited and enthusiastic about the future. With important help from you in recent years the faculty and staff have put the school on an upward trend. There is a determination inside the College to do an even better job for our students than has been done in the past. But your help is absolutely essential if that determination is to be turned into reality in the years immediately ahead.

I have long believed that we could count on your support in a time of need. My experiences of the last few months have made me more of a believer in this regard than ever before.

Sincerely,

Robert G. Lawson

Robert G. Lawson, Dean

Elvis Stahr Feted In Lexington

On January 14, 1983, former College of Law Dean Elvis Stahr was honored by the Land and Nature Trust of the Bluegrass at a fund-raising banquet held at the Lafayette Club. Dean Stahr is immediate past-president of the National Audubon Society.

Besides serving the University of Kentucky as provost and dean of its law school, Stahr has been president of the University of West Virginia and the University of Indiana. A Rhodes Scholar, he served as Secretary of the Army under President John F. Kennedy.

Kenneth B. Germain. *Publications.* Vol. 2 of the 1981-82 *Trademark Law Handbook* (Clark Boardman Co. 1982), reprinted from 71 Trademark Rep. (1981); "Trademark Developments" [in Court of Customs and Patent Appeals Cases], 92 *Fed. Rules Dec.* 235 (1982); "The Supreme Court's Decision in the *Inwood* Capsule-Color Case: Declination of Duty," 70 *K.L.J.* 731 (1982); "The Thirty-Fifth Year of Administration of the Lanham Trademark Act of 1946" [to be published in Vol. 72 of the Trademark Reporter under date of 1982]. *Professional Lectures:* "Current Review of U.S. Developments in Trademark Law: The Good, The Bad and the Audacious," United States Trademark Association, 103rd Annual Meeting, San Francisco, California (May 13, 1981); "Overview of the Substantive Principles of Trademark Law and Unfair Competition Before and During the Eighties: A Tripartite Analysis," BNA Education Systems Seminar on Trademark and Unfair Competition Litigation, Law and Practice, Hilton Head, S.C. (June 29, 1981); "Arbitration of Trademark Disputes as an Alternative to Litigation: An Introduction," BNA Education Systems Seminar on Trademark and Unfair Competition Law, Litigation and Practice, Hilton Head, S.C. (July 3, 1981); "Developments in Monetary Relief in Civil Cases—With Emphasis Upon Complex Personal Injury Cases," Advanced Civil Trial Advocacy Seminar, Salmon P. Chase College of Law, Highland Heights, Ky. (March 26, 1982); "Current Review of U.S. Developments in Trademark Law: A Mixed Bag," United States Trademark Association, 104th Annual Meeting, New Orleans La. (May 8, 1982); "Overview of The Substantive Principles of Trademark and Unfair Competition Law: A Tripartite Analysis," BNA Education Systems Seminar on U.S. Trademark and Unfair Competition Law and Practice, Montebello, Quebec, Canada (July 26, 1982); "Trademark Law Basics," Fayette County Bar Association, Continuing Legal Education Program, Lexington, Kentucky (November 6, 1982); "The Capsule-Color Cases," Cincinnati Patent Law Association, Monthly Meeting, Cincinnati, Ohio (December 9, 1982).

Alvin L. Goldman. *Publications: Legislation Protecting the Individual Employee,* 1982, BNA, Inc., (pre-

pared together with R. Covington); "Settlement of Disputes Over Interests," Chapter 16 of *Comparative Labour Law and Industrial Relations*, 1982, Kluwer, "Worker Participation in Decisions Within Undertakings," National Report presented at the 10th International Congress of the International Society for Labour Law, 1982, prepared annotated, edited cases on American labor law for Volume 7 of *International Labour Law Reports,"* 1982, and for Vols, 5 & 6 in 1981 edition (Monton Publication).

Willburt D. Ham. *Publications:* "Kentucky Law Survey, Corporations," 70 *K.L.J.* 223-254 (1981-82), which includes recent developments in corporation law at both the federal and state levels. The article was referred to in Volume 14, number 47 of the Securities Regulation and Law Reporter, a BNA publication, as a noteworthy resource for corporate practitioners.

William James attended the annual meeting of the American Association of Law Libraries in Detroit in June, 1982. He has been appointed a member of the committee selected to organize and coordinate the annual meeting of head law librarians at the A.A.L.S. annual meeting in Cincinnati in January, 1983. Professor James will also head the meeting of directors of academic law libraries discussing LEXIS vs. WESTLAW, library current awareness programs, and other areas of interest to academic law librarians at the 1983 A.A.L.L. Annual Meeting in Houston. His other activities have included a CLE presentation on Computerized Legal Research at the College of Law in August, 1982, and the presentation on Effective Legal Research to paralegal students from Midway College in June, 1982.

Gerald P. Johnston. *Publications:* "Legal Malpractice in Estate Planning," 67 *Iowa L. Rev.* 629-710 (May 1982) [selected to be reprinted in full in the December, 1982 issue of the Defense Law Journal]; "Attorney Accountability in Kentucky—Liability to Clients and Third Parties," 70 *K.L.J.* 747-805 (Dec. 1982). Professor Johnston will be a visiting professor at Washington University School of Law in St. Louis for academic year 1983-84.

Martin J. McMahon. *Publications:* "Expanding the Taxable Unit: The Aggregation of the Income of Children and Parents," 56 *N.Y.U.L. Rev.* 60 (1981); "Defining the 'Acquisition' in B Reorganizations Through the Step Transaction Doctrine," 67 *Iowa L. Rev.* 31 (1981) (reprinted in full in two parts in Monthly Digest of Tax Articles, November and December 1982]; "Defining the 'Economic Interest' in Minerals After *United States v. Swank,"* 70 Ky. L.J. 23 (1982). Professor McMahon is a visiting professor at the University of Virginia for academic year 1982-83.

Robert G. Schwemm. *Publications: Housing Discrimination Law* (a 500-page BNA book to be published in early 1983); "Compensatory Damages in Fair Housing Cases," 16 *Harv. C.R.-C.L. Rev.* 83 (1981).

Reginald L. Thomas. *Publications:* "Regulation of Business Development Companies," 55 *So. Calif. L.R.* 895; "A New Look at 10b-5: The Sale of Business Doctrine" (to be published by *Syracuse Law Review* in early 1983).

Richard H. Underwood: *Publications:* "The Doctor and His Lawyer: Conflicts of Interest", 30 *Kan. L. Rev.* 385 (1982), to be reprinted in *Defense L.J.*; "Conflicts and Malpractice: A Primer for Insurance Defense Counsel," 1 *Ky. Def. Couns.* 2 (1981); "Curbing Litigation Abuses: Judicial Control of Adversary Ethics—the Model Rules of Professional Conduct and Proposed Amendments to the Rules of Civil Procedure," ___*St. John's L. Rev.*___ (1982); "Adversary Ethics: More Dirty Tricks," 6 *Am. J. Trial Adv.* ___(1982); "Kentucky Law Survey, Insurance," ___*K.L.J.*___ (1982); "Kentucky Law Survey, Evidence," with Lyn Geisler, ___*Kentucky Law Journal*___ (1983).

Harold R. Weinberg participated in a three week law and economics institute held during the past summer. Sponsored by the Emory University Law and Economics Center, the institute featured presentations by several distinguished economists and emphasized antitrust economics. Professor Weinberg also recently published a book review in the Journal of Economic History and an article entitled "Commercial Paper in Economic Theory and Legal History" in the *Kentucky Law Journal.*

Sarah N. Welling. *Publications:* "Intracorporate Plurality in Criminal Conspiracy Law," 33 *Hastings L.J.* 1155 (1982)

Frederick W. Whiteside, Jr. *Professional Lectures:* "Estate Planning Aspects of the Kentucky Inheritance Tax" at U.K. Continuing Legal Education Program Tax Seminar (September 17, 1982), East Kentucky Estate Planning Council, and Blue Grass Estate Planning Council. *Activities:* appointed to newly created Kentucky Bar Association Special Committee on "Legal Concerns of Elderly Clients"; participation in training seminars for Department for Human Resources on legal advocacy for elderly Kentuckians.

The Right of Publicity

by Richard C. Ausness,
Professor of Law

The following is a summary of an article soon to appear in the *Temple Law Quarterly.*

I. The Nature of Publicity Rights

Over the years entertainers, athletes and other celebrities have sought to protect the economic values associated with a particular performance (performance values) and those which arise from the public's esteem or goodwill (recognition values).

Performance values stem from the fact that people will pay to watch or hear an entertainer perform, and the performer capitalizes on this public demand by controlling access to his performance. On the other hand, recognition values, which are somewhat analogous to "goodwill" in the business context, are derived from the public's recognition of one's name or likeness. A celebrity may exploit these values through endorsements and other forms of advertising, or he may benefit from the sale of posters, statues, tee-shirts and other memorabilia which carry his name or likeness.

In the past, legal theories such as privacy and unfair competition were invoked to protect performance and recognition values. However, these doctrines have now given way to a new concept known as the right of publicity.

Since the value of publicity often lies in commercial exploitation by others, the right of publicity, unlike the interests covered by privacy or unfair competition, is capable of being licensed or assigned to third persons. Furthermore, the assignable nature of the right of publicity allows it to survive the death of the celebrity.

The development of performing skills and the implementation of creative ideas often requires a substantial investment of time, energy and money. The greater the possibilities for personal profit, the more likely people are to pursue these creative, socially beneficial activities. The United States Supreme Court relied on this rationale in *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977), when it upheld the plaintiff's performance rights in connection with his "human cannonball" act.

The right of publicity not only protects performance values, as illustrated by *Zacchini*, but also protects against unauthorized use of the celebrity's name and "likeness" for commercial purposes. Thus, in *Factors Etc., Inc. v. Creative Card Co.*, 444 F. Supp. 279 (S.D.N.Y 1977), the plaintiff, who claimed an exclusive right to market merchandise bearing the name and likeness of Elvis Presley, sued to prevent the defendant from selling posters which featured photographs of the entertainer. The court distinguished the right of publicity from the traditional invasion of privacy action, emphasizing that commercial exploitation was the interest protected under the publicity concept. The publicity theory has also been extended to impersonations of entertainers and imitations of their "acts" or performances.

II. The Survivability Issue

Some courts have ruled that publicity rights may survive after the death of the celebrity, while others have rejected the notion of a *post mortem* right of publicity. Often the courts have relied on analogies to support their decisions. Thus, courts which have upheld the *post mortem* exercise of publicity rights have emphasized the similarity between these rights and other forms of inheritable property, while courts which have determined that the right of publicity should terminate at death have likened it to privacy or defamation.

The property analogy supports the notion of a survivable right of publicity in the following manner: since publicity rights are considered to be assignable forms of property, exploitable rights in a performance or *persona* can exist independently of those who created them just as a copyright interest in a written work can be severed from a proprietary interest in the underlying manuscript. Arguably therefore, publicity rights, at least when they are assigned, should not depend for their existence on whether the person who created them is dead or alive.

This reasoning was used in *Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215 (2d Cir. 1978), a case which involved the publicity rights of singer Elvis Presley. Presley had assigned his publicity rights to Boxcar, a corporation controlled by him and his manager. Shortly after Presley's death Boxcar transferred to Factors the exclusive right to produce and sell Presley posters and other products. Factors sued when a competitor began to market its own Elvis Presley posters. A federal district court concluded that Factors' rights were protected by a transferable and descendible right of publicity in that state and granted a preliminary injunction. On appeal, the circuit court upheld the lower court's judgment.

Other courts, however, have refused to acknowledge the right of publicity as an independent concept, characterizing it instead as an aspect of the right of privacy. According to this position, the plaintiff's true injury, whether he is a private person or a celebrity, is the loss of his right to control the use of his identity. Legal recognition of this dignitary interest gives rise to a right to demand a price for abandoning one's privacy. When the plaintiff's identity values are wrongfully appropriated, the use to which the name or likeness is put is less significant than the loss of freedom to choose whether his *persona* will be used in a certain way. Therefore, since the interest protected is a personal one, no cause of action should be allowed after the plaintiff's death.

This view was adopted by the California Supreme Court in *Lugosi v. Universal Pictures*, 603 P.2d 425 (Calif. 1979), when it declined to recognize a descendible right of publicity in Bela Lugosi's likeness as Count Dracula. While conceding that Lugosi might have been able to develop a protectible interest in the Dracula portrayal during his lifetime, the court refused to classify the interest as a descendible one. In the court's opinion recognition values such as those at stake in *Lugosi* could only be protected under the concept of privacy and, therefore, could not survive Bela Lugosi's death.

The sixth circuit court of appeals also refused to recognize a *post mortem* right of publicity in *Memphis Development Foundation v. Factors Etc., Inc.*, 616 F.2d 956 (6th Cir. 1980), another

decision which involved the publicity rights of Elvis Presley. The Memphis Development Foundation, a nonprofit corporation, desired to erect a bronze statue of Presley in downtown Memphis. To finance the project, the Foundation proposed to give eight-inch pewter replicas of the bronze statue to each person who contributed twenty-five dollars or more toward the project. When Factors objected to this scheme, the Foundation brought suit to enjoin it from interfering with the Foundation's fundraising efforts. Factors counterclaimed for an injunction to prohibit distribution of the statuettes.

The federal district court held that a descendible right of publicity existed and enjoined the Foundation from marketing the statuettes. On appeal, the circuit court declared that the law of defamation, designed to protect against the destruction of reputation, including the loss of earning capacity associated with it, provided the best analogy to the right of publicity. In addition, the court also noted that a descendible right of publicity was not necessary to motivate persons to seek excellence in their chosen field and expressed concern that such a right would encourage monopolistic practices and reduce economic opportunity for others. Consequently, it reversed the trial court and held that the Foundation was free to market its Presley statuettes.

Other courts have restricted *post mortem* exercise of the right of publicity to instances where the celebrity took steps to exploit his publicity values while alive. For example, in *Hicks v. Casablanca Records & Filmworks*, 464 F. Supp. 426 (S.D.N.Y. 1978), the heirs of Agatha Christie tried to enjoin distribution of a book and movie, *Agatha*. The court declared that the plaintiff must show that the decedent acted in such a way as to evidence his or her own recognition of the extrinsic commercial value of his or her name and likeness, and manifested that recognition in some overt manner.

Perhaps a better solution to the survivability problem would be for the courts or the state legislatures to limit *post mortem* exercise of publicity rights to a specified period. Because of the similarity between publicity rights and the interest protected by copyright, some commentators have suggested that the copyright period of life plus fifty years be applied to the right of publicity.

1982 Starting Salaries Compiled

Each year the College of Law Placement Office conducts a survey of new graduates to determine starting salaries in the legal employment marketplace. The Class of 1982 results were computed in early January, 1983 from respondents who graduated in August 1981. December 1981, and May 1982. About 60% of the class responded to the 1982 survey.

The average salary of all respondents increased 8% this year over 1981, a reduction in the rate of growth of over one-half from the previous year's report. The median for all respondents remained the same, probably indicating a reduction in the ripple effect throughout the market of rising salaries offered by large firms. Most categories of non-cash benefits posted a modest decline, indicating that gains being made in salaries in the past recessionary year were perhaps being given up in other areas.

The results of the survey are listed below. All salary figures have been rounded off to the nearest dollar. Percentage numbers shown in parentheses indicate how the particular entry compares to what was reported by the Class of 1981.

Final employment statistics for the Class of 1982 will be compiled in late January and made available in late February or early March.

SURVEY RESULTS

I. All respondents

a. Range: $10,000-65,000
b. Average salary: $21,566 (8%)
c. Median salary: $20,000 (0%)

II. Private practice

a. All private practice respondents
Range: $10,000-43,000
Average: $22,091 (6.7%); Median: $20,000 (0%)

b. Graduates' projected first year income, by firm size

Size	Range	No. Resp.	Average	Median
Solo practice	$10,000-17,500	5	$13,100 (0%)	$12,000 NA
2-10	12,000-35,000	35	19,914 (6.6%)	18,600 (12.7%)
11-25	12,000-28,000	7	20,535 (9.5%)	20,000 (8%)
26-50	15,500-33,000	5	25,700 (2%)	25,000 (2%)
51 up	28,000-43-000	11	32,454 (21%)	18,500 (11%)

c. Percentage of all private practice respondents who reported receiving non-cash benefits:
Bar dues—60%
CLE tuition, expenses—71%
Health insurance—62%
Malpractice insurance—75%
Life insurance—30%
Parking—6%
Disability insurance—14%

III. Publicity Rights and the First Amendment

By its very nature exploitation of publicity rights by performers and celebrities limits some forms of expression, thereby coming into potential conflict with the first amendment. Resolving this conflict requires the courts to strike a balance between the interests reflected in the right of publicity and those which underlie the first amendment. The cases to date have fallen into four general categories: (1) performances; (2) fictionalization; (3) memorabilia; and (4) impersonations.

1. Performance Rights

The leading decision in this area is *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562 (1977). The plaintiff in *Zacchini* brought suit against a local television station when it broadcast his entire fifteen-second "human cannonball" act on its evening news program. Reversing the Ohio Supreme

Civic and social club dues—8%
Retirement program—6%
Miscellany: licensing fee 5%; bar review expenses 6%; dental plans 3%; furnished automobile 3%. Credit card costs, moving expenses, and home down payment loans were listed by one person each.

d. Private practice respondents, by geographic area
   1. Kentucky, statewide
      Range: $10,000-30,000
      Average: $19,615 (7.6%); Median: $18,500 (2.7%)
   2. Geographic regions within Kentucky
      (Area groupings altered for 1982, hence no 1981 comparison)
      a. Western Kentucky (Henderson, McCracken, Graves, Warren, Daviess, Muhlenberg, Caldwell)
         Range: $10,000-26,500 (11)
         Average: $19,772; Median: $20,000
      b. Louisville and surrounding counties
         Range: $12,000-29,000 (8)
         Average: $23,387; Median: 26,500
      c. Lexington and surrounding counties
         Range: $10,000-29,000 (15)
         Average: $19,110; Median: $20,000
      d. Southeast Kentucky (Whitley, Rockcastle, Pike, Magoffin, Letcher)
         Range: $16,000-30,000 (6)
         Average: $19,167; Median: $17,500
      e. Eastern Kentucky (Estill, Montgomery, Boyd, Rowan, Martin)
         Range: $16,000-21,000 (10)
         Average: $17,450; Median: $18,000
      f. Out-of-State (Tennessee, California, Ohio, Florida, Colorado, Georgia, Texas, New York, DC)
         Range: $19,500-43,000 (13)
         Average: $31,615; Median: $29,500

III. Other employers

a. State Government (legal and non-legal positions)
   Range: $11,640-20,800 (12)
   Average: $15,614; Median: $14,900
b. Judicial clerkship
   Range: $14,556-24,508 (6)
   Average: $16,739; Median: $15,000
c. Corporations (legal and non-legal positions)
   Range: $22,450-65,000 (6)
   Average: $34,841; Median: $30,500
d. Legal Services practice
   Range: $15,000-15,500 (3)
e. Military practice
   Range: $20,000-29,514 (2)

Court, the United States Supreme Court ruled that the first amendment did not permit the defendant to broadcast Zacchini's "entire act."

2. Fictionalization

Recognizing the overriding nature of the public's right to information about matters of current interest, the courts have generally allowed the media to use a person's name or picture without liability in connection with a legitimate news event. This principle, known as the "newsworthiness" or public interest privilege, was first applied in the privacy cases, but has now been extended to the publicity area as well. The newsworthiness privilege is not limited to "news" but applies to any factual account as long as the story is accurate and deals with a matter of public interest. For example, the use of the plaintiff's name, or incidents from his life, in connection with a biography is privileged as long as the account is accurate. Information can also be disseminated by motion pictures and radio or television broadcasts. Consequently, depictions of actual events in these media are also privileged.

First amendment protection may extend to fictional works, not only because they frequently contribute something to the marketplace of ideas, but also because they are forms of expression in their own right. Thus, fiction writers who loosely base their characters or plots on actual persons or events are generally protected as long as their portrayals are not false or defamatory.

Docudramas and fictionalized accounts of actual events are more difficult to fit into the scheme of first amendment protection.

Nevertheless, *Hicks v. Casablanca Records & Filmworks*, 464 F. Supp. 426 (S.D.N.D. 1978), suggests that fictionalized accounts, when clearly labeled as such, should also be protected by the first amendment. The *Hicks* case involved an attempt by the heirs and assignees of mystery writer, Agatha Christie, to enjoin the defendants from distributing the motion picture *Agatha*. The plaintiffs also sought to prevent another defendant from selling copies of the novel, "Agatha." Both the book and the movie involved a fictionalized account of Agatha Christie's eleven day disappearance in 1926, and portrayed her as an emotionally unstable woman, who engaged in a sinister plot to murder her husband's mistress in order to regain his affections. The court noted that "books and movies are vehicles through which ideas and opinions are disseminated and, as such, have enjoyed certain constitutional protections, not generally accorded 'merchandise'." Consequently, it refused to grant the injunction sought by the plaintiff.

3. Memorabilia

Two decisions have examined the first amendment issue in the context of posters and other memorabilia. In the first case, *Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215 (2d Cir. 1978), discussed earlier, the defendant contended that publication of the memorial poster of Elvis Presley commemorated a newsworthy event, the death of the singer, and therefore should be privileged. The court summarily rejected this argument and determined that the defendant's act was not privileged.

The second case, *Current Audio v.*

R.C.A. Corporation, 337 N.Y.S.2d 949 (Sup. Ct. 1972), also involved Elvis Presley. The cover of the premier issue of *Current Audio* magazine depicted Elvis Presley at a press conference. Inside the magazine was a phonograph record which included a two and a half minute excerpt from that same press conference. Although Presley's recognition and performance values were arguably being used to promote the sale of the magazine, the court concluded that the press conference was newsworthy and hence outside the protection extended by the right of publicity.

4. *Impersonations*

The most recent judicial examination of the scope of the first amendment in the publicity rights area was *Groucho Marx Productions, Inc. v. Night and Day Company*, 523 F. Supp. 485 (S.D.N.Y. 1981), which involved an impersonation of the Marx Brothers by actors in the play *A Day in Hollywood/A Night in the Ukraine*. The defendants contended that the first amendment protected dramatic performances of literary works such as their play. While acknowledging that entertainment enjoys some first amendment protection, the court declared that the purpose or function of the entertainment must be scrutinized to determine whether it infringed upon the plaintiff's right of publicity. According to the court, works designed primarily to promote the dissemination of ideas or information through news or fictionalization were regarded as protected expression; however, works which made use of the plaintiff's name or likeness for commercial purposes, such as the sale of merchandise, fell outside the scope of any first amendment protection.

The court in *Groucho Marx Productions* rejected the notion that the play could be interpreted as a biographical sketch of the Marx Brothers. Nor, in the court's opinion could the play be privileged as entertainment or as satire, parody or burlesque. This refusal to extend first amendment protection to *A Night in Hollywood* was based on the court's view that the "Ukraine" segment of the play conveyed no ideas and was nothing more than a skillful imitation of the Marx Brothers' performances.

A federal district court in New Jersey reached a similar conclusion in *Estate of Presley v. Russen*, 513 F. Supp. 1339 (D.N.J. 1981), a case which involved an Elvis Presley impersonator. While conceding that the defendant's impersonation was entertaining, the court found that it was essentially an imitation, not a parody, burlesque or other critical commentary on Presley or his music. Thus, in the court's opinion the primary objective of the show was to exploit the Presley image without contributing anything of substantial value in return.

IV. Conclusion

The right of publicity shows great promise as a technique for protecting performance and publicity values. Recent cases have raised, but not entirely resolved, a number of significant issues. These include the survivability problems and the question of constitutional privilege. Other matters, such as the scope of preemption under the federal copyright act, must also be addressed by the courts before the status of the right of publicity can be entirely settled.

New Phone Numbers Listed

On January 1, General Telephone installed at the University a new telephone system exchange. As a result, telephone numbers for nearly all College of Law offices have been changed. A complete listing follows, for your reference.

Administrative Offices

Office of the Dean	257-1678
Offices of the Associate Deans	257-8959 (Stevens)
	257-8321 (Van Booven)
Office of Continuing Legal Education	257-2922
Evans Law Library	257-8686
Kentucky Law Journal	257-4747
Student Research Service	257-4650
Mineral Law Center	257-1151

Faculty Offices

Richard C. Ausness	257-3840
John R. Batt	257-3281
Carolyn S. Bratt	257-3685
Rutheford B. Campbell, Jr.	257-3198
William H. Fortune	257-1880
Barbara Foster	257-2955
Kenneth B. Germain	257-1936
Alvin L. Goldman	257-3325
Louise Graham	257-3488
Willburt D. Ham	257-4698
William James	257-8346
Gerald P. Johnston	257-3434
Robert G. Lawson	257-8319
John R. Leathers	257-8754
Thomas P. Lewis	257-5695
William L. Matthews, Jr.	257-3998
Paul Oberst	257-3950
John M. Rogers	257-3370
Robert G. Schwemm	257-6013
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Reginald L. Thomas	257-3636
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